IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

MFA.No. 783 of 2000()

MV(OP).1034/1996 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, TIRUR DT.14.3.2000.
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APPELLANT: PETITIONER

*** KUMARAN NAIR.V.,**
TRIVENI, PAYIMBRA, KURUVATTOOR PO.,
CALICUT DISTRICT(DIED)

ADDL.2ND APPEALLANT

2. P.KAMALA AMMA, W/O.LATE V.KUMARAN NAIR,
'THRIVENI' KARUVATTOOR P.O., KAKKODI
(VIA) KOZHIKODE 673 611.

LEGAL REPRESENTATIVE OF THE DECEASED APPELLANT IS IMPLEADED AS ADDL.3RD APPELLANT VIDE ORDER DT.5.12.06 ON IA. 2298/2006.

BY ADV. SRI.N.JAMES KOSHY

RESPONDENTS: RESPONDENTS
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1. C.MOIDEEN, S/O.MOIDU, VEGETABLE STORES,
STALL NO.B2, MARKET TIRUR,
MALAPPURAM DISTRICT, R.C. OWNER OF MINI LORRY
KL 1O A/1638.

2. MOHAMMED KUTTY, S/O. KUTTY HASSAN,
AGED 25 YEARS, MILAMPAD HOUSE,
NIRAMARUTHOOR, TIRUR, DRIVER OF -DO- -DO-

3. UNITED INDIA INSURANCE CO. LTD.,
BRANCH D- SUNITHA BUILDINGS, II FLOOR,
DB ROAD, R.S.PURAM, COIMBATORE.
POLICY NO.170204/O/31/21/7855/93.

BY ADV. SRI.MATHEWS JACOB (SR.) - R3
SRI.P.JACOB MATHEW

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 28 / 05 / 2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 783 of 2000

Dated this the 28th day of May, 2007

Judgment

Koshy, J.

Legal representative of the claimant in O.P. (MV) No.1034 of 1996 on the file of the Motor Accident Claims Tribunal, Tirur filed this appeal. Claimant sustained very serious injuries in a motor accident. He claimed compensation of Rs.Three lakhs. However, total compensation awarded by the tribunal was only Rs.63,000/-. The tribunal found that the accident occurred due to the negligence of the driver of the vehicle insured by the third respondent insurance company. Only quantum of compensation is disputed.

2. Ext.A3 is the wound certificate issued from the Government Hospital, Tirurangadi which shows that he had fracture, dislocation of the left hip and also fracture of both bones of the right upper 1/3rd of leg. He was immediately referred to the Medical College Hospital, Kozhikode. Ext.A4 is the treatment card issued from the Medical College Hospital. He was discharged on

26.2.1994. Operation was conducted on 9.2.1994. He had again gone to the hospital on various dates upto 6.6.1994. He was again admitted in the same hospital on 20.6.1994 and was discharged on 20.7.1994. He was admitted for physiotherapy thereafter. Ext.A6 C.T. scan report shows that there was no evidence of skull bone injury or bone injury, but, there was a bilateral haemo thorax with collapse of lower lobe. Ext.A6 (a) is another C.T. scan report which shows that there was oblique fracture line extending through the head of right femur. It is further noticed that under the scanning, fracture of right acetabulam was also found. Ext.X1 is the case sheet relating to the treatment given to him. Ext.A7 is the certificate given by the doctor attached to the Medical College Hospital, Kozhikode. It shows that there was evidence of vascular necrosis of right hip and gross osteo arthritic damages in the left hip with a vascular necrosis. Again, it is noted that there was mal-united fracture upper tibia and fibula with osteo arthritic damages in knee joint. Therefore, total disability was assessed by the doctor at 40%. However, after seeing the claimant personally, the tribunal fixed the percentage of disability at 30%. Considering the

nature of injuries and final certificate, we are of the opinion that assessment of the tribunal at 30% disability for calculating the compensation needs no interference.

3. According to the claimant, he was a businessman and he was earning Rs.3,000/- per month, but, absolutely no evidence was produced to show that. He was aged 56 years. He was maintaining a family from his income. Even an unskilled manual labourer in Kerala will get Rs.100/- per day in 1994.

4. Considering all the above circumstances, we fix Rs.1,800/- as the monthly income in the absence of data. Considering the age of the appellant, 8 is the multiplier. Therefore, compensation payable for disability and earning power will be Rs.1800 x 12 x 8 x $\frac{30}{100}$ = Rs.51,840/-. Tribunal granted Rs.29,000/- for disability and Rs.5,000/- for functional disability. Thus Rs.34,000/- was granted. So, additional compensation payable for disability and earning power is Rs.17,840/-. The tribunal found that at least for six months he was completely disabled and during that period

he was under treatment. Tribunal has awarded Rs.6,000/- for loss of earning taking Rs.1,000/- as monthly income. Since we have taken Rs.1,800/- as the monthly income, he is entitled to another Rs.4,800/-. Since bills were not produced, no amount was awarded for cost of medicines. Considering the prolonged treatment undergone by the claimant and considering the operations undergone by him and because of the nature of future treatment that may be taken into account, we award Rs.4,000/- for cost of medicines and hospital treatment. For hospital treatment, tribunal awarded Rs.1,500/-. Deducting that, additional compensation payable will be Rs.2,500/-. Thus, claimant will be entitled for an additional amount of Rs.25,140/-.

5. Despite the contention that amounts awarded under other heads are also very meagre, we see no reason to interfere with the amounts awarded under other heads. The additional amount of Rs.25,140/- should be deposited by the third respondent insurance company with 8% interest from the date of application till deposit within three months from the date of receipt of a copy of this judgement. It is also submitted that during the pendency of the appeal, appellant died and legal representatives

were impleaded. On deposit of the amount, the legal representatives are entitled to withdraw the same.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A. NO.783/2000

JUDGMENT

Dated:28th May, 2007